

**ASSEMBLY BILL**

**No. 1941**

**Introduced by Assembly Member Chan**

February 11, 2004

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An act to amend Sections 851.5, 1170, 1170.3, 1170.45, 1203, and 1203.016 of, and to add Sections 833.2 and 13517.7 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1941, as introduced, Chan. Criminal procedure.

Existing law generally prescribes the authority and obligations of law enforcement entities in regard to effecting an arrest.

This bill would, commencing January 1, 2005, require law enforcement and protective services agencies to develop protocols in collaboration with local educational, judicial, correctional, and community-based organizations, when appropriate, regarding how to best cooperate in their response to the arrest of a caretaker parent in a home in which a minor child resides, to ensure the child's safety and well-being.

By imposing additional duties on local government entities, this bill would impose a state-mandated local program.

Existing law provides an arrested person with certain rights regarding the opportunity to make telephone calls incident to the person being booked or detained, as specified. The willful deprivation of these rights by a public officer or employee is a misdemeanor.

This bill would, in addition, provide that when, during booking, an arrested person is determined to be a custodial parent of a minor child or children, the person would be entitled to make 3 telephone calls at

no expense, as specified, for the purpose of arranging for the care of the minor child or children.

By imposing additional duties on local government entities, this bill would impose a state-mandated local program. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law generally regulates sentencing, including the consideration of mitigating factors and other criteria for purposes of sentencing.

This bill would include a defendant's custodial responsibilities for minor children as an element for consideration for specified purposes related to sentencing.

Existing law requires the Judicial Council to collect specified data on criminal cases and report annually thereof to the Legislature.

This bill would require additional information relating to defendants who are custodial parents be included in the report, commencing January 1, 2006.

Existing law provides that if a person is convicted of a felony and is eligible for probation, the court is required, prior to pronouncement of judgment, to refer the matter to a probation officer for purposes of investigation and report to the court, for purposes of considering specified circumstances that may be considered either in aggravation of mitigation of the punishment.

This bill would add to the specified circumstances required to be investigated and reported, the defendant's custodial responsibilities as a parent of a minor child.

By imposing additional duties on local probation departments, this bill would impose a state-mandated local program.

Existing law establishes the Commission on Peace Officer Standards and Training and charges it with various duties in connection with training law enforcement personnel.

This bill would require the commission to establish minimum standards for the purpose of raising the level of competence of local law enforcement officers to ensure child safety at the time of a caretaker parent's arrest, including offering specialized training.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that



reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 833.2 is added to the Penal Code, to  
2 read:  
3 833.2. Commencing January 1, 2005, law enforcement and  
4 protective services agencies shall develop protocols in  
5 collaboration with local educational, judicial, correctional, and  
6 community-based organizations, when appropriate, regarding  
7 how to best cooperate in their response to the arrest of a caretaker  
8 parent in a home in which a minor child resides, to ensure the  
9 child's safety and well-being.  
10 SEC. 2. Section 851.5 of the Penal Code is amended to read:  
11 851.5. (a) Immediately upon being booked, and, except  
12 where physically impossible, no later than three hours after arrest,  
13 an arrested person has the right to make at least three completed  
14 telephone calls, as described in subdivision (b).  
15 The arrested person shall be entitled to make at least three such  
16 calls at no expense if the calls are completed to telephone numbers  
17 within the local calling area.  
18 (b) At any police facility or place where an arrestee is detained,  
19 a sign containing the following information in bold block type  
20 shall be posted in a conspicuous place:  
21 That the arrestee has the right to free telephone calls within the  
22 local dialing area, or at his *or her* own expense if outside the local  
23 area, to three of the following:  
24 (1) An attorney of his *or her* choice or, if he *or she* has no funds,  
25 the public defender or other attorney assigned by the court to assist

1 indigents, whose telephone number shall be posted. This phone  
2 call shall not be monitored, eavesdropped upon, or recorded.

3 (2) A bail bondsman.

4 (3) A relative or other person.

5 (c) *If, upon questioning during the booking process, the*  
6 *arrested person is identified as a custodial parent with*  
7 *responsibility for a minor child, the arrested person shall be*  
8 *entitled to make three additional calls at no expense if the calls are*  
9 *completed to telephone numbers within the local calling area to a*  
10 *relative or other person for the purpose of arranging for the care*  
11 *of the minor child or children in the parent's absence.*

12 (d) These telephone calls shall be given immediately upon  
13 request, or as soon as practicable.

14 ~~(d)~~

15 (e) This provision shall not abrogate a law enforcement  
16 officer's duty to advise a suspect of his right to counsel or of any  
17 other right.

18 ~~(e)~~

19 (f) Any public officer or employee who willfully deprives an  
20 arrested person of any right granted by this section is guilty of a  
21 misdemeanor.

22 SEC. 3. Section 1170 of the Penal Code is amended to read:

23 1170. (a) (1) The Legislature finds and declares that the  
24 purpose of imprisonment for crime is punishment. This purpose is  
25 best served by terms proportionate to the seriousness of the offense  
26 with provision for uniformity in the sentences of offenders  
27 committing the same offense under similar circumstances. The  
28 Legislature further finds and declares that the elimination of  
29 disparity and the provision of uniformity of sentences can best be  
30 achieved by determinate sentences fixed by statute in proportion  
31 to the seriousness of the offense as determined by the Legislature  
32 to be imposed by the court with specified discretion.

33 (2) Paragraph (1) shall not be construed to preclude programs,  
34 including educational programs that are designed to rehabilitate  
35 nonviolent, first-time felony offenders. The Legislature  
36 encourages the development of policies and programs designed to  
37 educate and rehabilitate nonviolent, first-time felony offenders,  
38 *particularly those who are sole custodial parents of minor*  
39 *dependent children*, consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(4) *The Judicial Council shall include in its sentencing rules, as a mitigating factor for judicial consideration, a prisoner's status as a sole custodial parent of minor children.*

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit

1 a statement in aggravation or mitigation to dispute facts in the  
2 record or the probation officer's report, or to present additional  
3 facts. In determining whether there are circumstances that justify  
4 imposition of the upper or lower term, the court may consider the  
5 record in the case, the probation officer's report, other reports  
6 including reports received pursuant to Section 1203.03 and  
7 statements in aggravation or mitigation submitted by the  
8 prosecution, the defendant, or the victim, or the family of the  
9 victim if the victim is deceased, and any further evidence  
10 introduced at the sentencing hearing. The court shall set forth on  
11 the record the facts and reasons for imposing the upper or lower  
12 term. The court may not impose an upper term by using the fact  
13 of any enhancement upon which sentence is imposed under any  
14 provision of law. A term of imprisonment shall not be specified if  
15 imposition of sentence is suspended.

16 (c) The court shall state the reasons for its sentence choice on  
17 the record at the time of sentencing. The court shall also inform the  
18 defendant that as part of the sentence after expiration of the term  
19 he or she may be on parole for a period as provided in Section  
20 3000.

21 (d) When a defendant subject to this section or subdivision (b)  
22 of Section 1168 has been sentenced to be imprisoned in the state  
23 prison and has been committed to the custody of the Director of  
24 Corrections, the court may, within 120 days of the date of  
25 commitment on its own motion, or at any time upon the  
26 recommendation of the Director of Corrections or the Board of  
27 Prison Terms, recall the sentence and commitment previously  
28 ordered and resentence the defendant in the same manner as if he  
29 or she had not previously been sentenced, provided the new  
30 sentence, if any, is no greater than the initial sentence. The  
31 resentence under this subdivision shall apply the sentencing rules  
32 of the Judicial Council so as to eliminate disparity of sentences and  
33 to promote uniformity of sentencing. Credit shall be given for time  
34 served.

35 (e) (1) Notwithstanding any other law and consistent with  
36 paragraph (1) of subdivision (a) of Section 1170, if the Director of  
37 Corrections or the Board of Prison Terms or both determine that  
38 a prisoner satisfies the criteria set forth in paragraph (2), the  
39 director or the board may recommend to the court that the  
40 prisoner's sentence be recalled.



1 (2) The court shall have the discretion to resentence or recall if  
2 the court finds both of the following:

3 (A) The prisoner is terminally ill with an incurable condition  
4 caused by an illness or disease that would produce death within six  
5 months, as determined by a physician employed by the  
6 department.

7 (B) The conditions under which the prisoner would be released  
8 or receive treatment do not pose a threat to public safety.

9 The Board of Prison Terms shall make findings pursuant to this  
10 subdivision before making a recommendation for resentence or  
11 recall to the court. This subdivision does not apply to a prisoner  
12 sentenced to death or a term of life without the possibility of  
13 parole.

14 (3) Within 10 days of receipt of a positive recommendation by  
15 the director or the board, the court shall hold a hearing to consider  
16 whether the prisoner's sentence should be recalled.

17 (4) The prisoner or his or her family member or designee may  
18 request consideration for recall and resentencing by contacting the  
19 chief medical officer at the prison or the Director of Corrections.  
20 Upon receipt of the request, if the director determines that the  
21 prisoner satisfies the criteria set forth in paragraph (2), the director  
22 or board may recommend to the court that the prisoner's sentence  
23 be recalled. The director shall submit a recommendation for  
24 release within 30 days in the case of inmates sentenced to  
25 determinate terms and, in the case of inmates sentenced to  
26 indeterminate terms, the director may make a recommendation to  
27 the Board of Prison Terms with respect to the inmates who have  
28 applied under this section. The board shall consider this  
29 information and make an independent judgment pursuant to  
30 paragraph (2) and make findings related thereto before rejecting  
31 the request or making a recommendation to the court. This action  
32 shall be taken at the next lawfully noticed board meeting.

33 (5) Any recommendation for recall submitted to the court by  
34 the Director of Corrections or the Board of Prison Terms shall  
35 include one or more medical evaluations, a postrelease plan, and  
36 findings pursuant to paragraph (2).

37 (6) If possible, the matter shall be heard before the same judge  
38 of the court who sentenced the prisoner.



(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 4. Section 1170.3 of the Penal Code is amended to read:

1170.3. The Judicial Council shall seek to promote uniformity in sentencing under Section 1170, by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

(1) Grant or deny probation.

(2) Impose the lower or upper prison term.

(3) Impose concurrent or consecutive sentences.

(4) Determine whether or not to impose an enhancement where that determination is permitted by law.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court *including a defendant's custodial responsibilities for minor children*.

SEC. 5. Section 1170.45 of the Penal Code is amended to read:

1170.45. The Judicial Council shall collect data on criminal cases statewide relating to the disposition of those cases according to the race and ethnicity of the defendant, and report annually thereon to the Legislature beginning no later than January 1, 1999. *Commencing January 1, 2006, this data shall include information about the number of custodial parents who are defendants in criminal cases, the number of minor children of these parents, and the disposition of the criminal cases, by gender, race, and ethnicity.* It is the intent of the Legislature to appropriate funds to the Judicial Council for this purpose.

SEC. 6. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the



1 community subject to conditions established by the court without  
2 the supervision of a probation officer. It is the intent of the  
3 Legislature that both conditional sentence and probation are  
4 authorized whenever probation is authorized in any code as a  
5 sentencing option for infractions or misdemeanors.

6 (b) (1) Except as provided in subdivision (j), if a person is  
7 convicted of a felony and is eligible for probation, before judgment  
8 is pronounced, the court shall immediately refer the matter to a  
9 probation officer to investigate and report to the court, at a  
10 specified time, upon the circumstances surrounding the crime and  
11 the prior history and record of the person, *including the person's*  
12 *custodial responsibilities as a parent of minor children*, which may  
13 be considered either in aggravation or mitigation of the  
14 punishment.

15 (2) (A) The probation officer shall immediately investigate  
16 and make a written report to the court of his or her findings and  
17 recommendations, including his or her recommendations as to the  
18 granting or denying of probation and the conditions of probation,  
19 if granted.

20 (B) Pursuant to Section 828 of the Welfare and Institutions  
21 Code, the probation officer shall include in his or her report any  
22 information gathered by a law enforcement agency relating to the  
23 taking of the defendant into custody as a minor, which shall be  
24 considered for purposes of determining whether adjudications of  
25 commissions of crimes as a juvenile warrant a finding that there  
26 are circumstances in aggravation pursuant to Section 1170 or to  
27 deny probation.

28 (C) The probation officer shall also include in the report his or  
29 her recommendation of both of the following:

30 (i) The amount the defendant should be required to pay as a  
31 restitution fine pursuant to subdivision (b) of Section 1202.4.

32 (ii) Whether the court shall require, as a condition of probation,  
33 restitution to the victim or to the Restitution Fund and the amount  
34 thereof.

35 (D) The report shall be made available to the court and the  
36 prosecuting and defense attorneys at least five days, or upon  
37 request of the defendant or prosecuting attorney, nine days prior  
38 to the time fixed by the court for the hearing and determination of  
39 the report, and shall be filed with the clerk of the court as a record  
40 in the case at the time of the hearing. The time within which the

1 report shall be made available and filed may be waived by written  
2 stipulation of the prosecuting and defense attorneys that is filed  
3 with the court or an oral stipulation in open court that is made and  
4 entered upon the minutes of the court.

5 (3) At a time fixed by the court, the court shall hear and  
6 determine the application, if one has been made, or, in any case,  
7 the suitability of probation in the particular case. At the hearing,  
8 the court shall consider any report of the probation officer and shall  
9 make a statement that it has considered the report which shall be  
10 filed with the clerk of the court as a record in the case. If the court  
11 determines that there are circumstances in mitigation of the  
12 punishment prescribed by law or that the ends of justice would be  
13 served by granting probation to the person, it may place the person  
14 on probation. If probation is denied, the clerk of the court shall  
15 immediately send a copy of the report to the Department of  
16 Corrections at the prison or other institution to which the person  
17 is delivered.

18 (4) The preparation of the report or the consideration of the  
19 report by the court may be waived only by a written stipulation of  
20 the prosecuting and defense attorneys that is filed with the court  
21 or an oral stipulation in open court that is made and entered upon  
22 the minutes of the court, except that there shall be no waiver unless  
23 the court consents thereto. However, if the defendant is ultimately  
24 sentenced and committed to the state prison, a probation report  
25 shall be completed pursuant to Section 1203c.

26 (c) If a defendant is not represented by an attorney, the court  
27 shall order the probation officer who makes the probation report  
28 to discuss its contents with the defendant.

29 (d) If a person is convicted of a misdemeanor, the court may  
30 either refer the matter to the probation officer for an investigation  
31 and a report or summarily pronounce a conditional sentence. If the  
32 case is not referred to the probation officer, in sentencing the  
33 person, the court may consider any information concerning the  
34 person that could have been included in a probation report. The  
35 court shall inform the person of the information to be considered  
36 and permit him or her to answer or controvert the information. For  
37 this purpose, upon the request of the person, the court shall grant  
38 a continuance before the judgment is pronounced.



(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

1 (B) The person used, or attempted to use, a deadly weapon  
2 upon a human being in connection with the perpetration of the  
3 previous crime.

4 (C) The person willfully inflicted great bodily injury or torture  
5 in the perpetration of the previous crime.

6 (7) Any public official or peace officer of this state or any city,  
7 county, or other political subdivision who, in the discharge of the  
8 duties of his or her public office or employment, accepted or gave  
9 or offered to accept or give any bribe, embezzled public money, or  
10 was guilty of extortion.

11 (8) Any person who knowingly furnishes or gives away  
12 phencyclidine.

13 (9) Any person who intentionally inflicted great bodily injury  
14 in the commission of arson under subdivision (a) of Section 451  
15 or who intentionally set fire to, burned, or caused the burning of,  
16 an inhabited structure or inhabited property in violation of  
17 subdivision (b) of Section 451.

18 (10) Any person who, in the commission of a felony, inflicts  
19 great bodily injury or causes the death of a human being by the  
20 discharge of a firearm from or at an occupied motor vehicle  
21 proceeding on a public street or highway.

22 (11) Any person who possesses a short-barreled rifle or a  
23 short-barreled shotgun under Section 12020, a machine gun under  
24 Section 12220, or a silencer under Section 12520.

25 (12) Any person who is convicted of violating Section 8101 of  
26 the Welfare and Institutions Code.

27 (13) Any person who is described in paragraph (2) or (3) of  
28 subdivision (g) of Section 12072.

29 (f) When probation is granted in a case which comes within  
30 subdivision (e), the court shall specify on the record and shall enter  
31 on the minutes the circumstances indicating that the interests of  
32 justice would best be served by that disposition.

33 (g) If a person is not eligible for probation, the judge shall refer  
34 the matter to the probation officer for an investigation of the facts  
35 relevant to determination of the amount of a restitution fine  
36 pursuant to subdivision (b) of Section 1202.4 in all cases where the  
37 determination is applicable. The judge, in his or her discretion,  
38 may direct the probation officer to investigate all facts relevant to  
39 the sentencing of the person. Upon that referral, the probation  
40 officer shall immediately investigate the circumstances

1 surrounding the crime and the prior record and history of the  
2 person and make a written report to the court of his or her findings.  
3 The findings shall include a recommendation of the amount of the  
4 restitution fine as provided in subdivision (b) of Section 1202.4.

5 (h) If a defendant is convicted of a felony and a probation report  
6 is prepared pursuant to subdivision (b) or (g), the probation officer  
7 may obtain and include in the report a statement of the comments  
8 of the victim concerning the offense. The court may direct the  
9 probation officer not to obtain a statement if the victim has in fact  
10 testified at any of the court proceedings concerning the offense.

11 (i) No probationer shall be released to enter another state unless  
12 his or her case has been referred to the Administrator of the  
13 Interstate Probation and Parole Compacts, pursuant to the  
14 Uniform Act for Out-of-State Probationer or Parolee Supervision  
15 (Article 3 (commencing with Section 11175) of Chapter 2 of Title  
16 1 of Part 4) and the probationer has reimbursed the county that has  
17 jurisdiction over his or her probation case the reasonable costs of  
18 processing his or her request for interstate compact supervision.  
19 The amount and method of reimbursement shall be in accordance  
20 with Section 1203.1b.

21 (j) In any court where a county financial evaluation officer is  
22 available, in addition to referring the matter to the probation  
23 officer, the court may order the defendant to appear before the  
24 county financial evaluation officer for a financial evaluation of the  
25 defendant's ability to pay restitution, in which case the county  
26 financial evaluation officer shall report his or her findings  
27 regarding restitution and other court-related costs to the probation  
28 officer on the question of the defendant's ability to pay those costs.

29 Any order made pursuant to this subdivision may be enforced  
30 as a violation of the terms and conditions of probation upon willful  
31 failure to pay and at the discretion of the court, may be enforced  
32 in the same manner as a judgment in a civil action, if any balance  
33 remains unpaid at the end of the defendant's probationary period.

34 (k) Probation shall not be granted to, nor shall the execution of,  
35 or imposition of sentence be suspended for, any person who is  
36 convicted of a violent felony, as defined in subdivision (c) of  
37 Section 667.5, or a serious felony, as defined in subdivision (c) of  
38 Section 1192.7, and who was on probation for a felony offense at  
39 the time of the commission of the new felony offense.

1 SEC. 7. Section 1203.016 of the Penal Code is amended to  
2 read:

3 1203.016. (a) Notwithstanding any other provision of law,  
4 the board of supervisors of any county may authorize the  
5 correctional administrator, as defined in subdivision (h), to offer  
6 a program under which minimum security inmates and low-risk  
7 offenders committed to a county jail or other county correctional  
8 facility or granted probation, or inmates participating in a work  
9 furlough program, may voluntarily participate in a home detention  
10 program during their sentence in lieu of confinement in the county  
11 jail or other county correctional facility or program under the  
12 auspices of the probation officer. *Low-risk offenders who are the*  
13 *sole custodial parents of minor children should especially be*  
14 *considered for the program, if otherwise eligible.*

15 (b) The board of supervisors may prescribe reasonable rules  
16 and regulations under which a home detention program may  
17 operate. As a condition of participation in the home detention  
18 program, the inmate shall give his or her consent in writing to  
19 participate in the home detention program and shall in writing  
20 agree to comply with the rules and regulations of the program,  
21 including, but not limited to, the following rules:

22 (1) The participant shall remain within the interior premises of  
23 his or her residence during the hours designated by the correctional  
24 administrator.

25 (2) The participant shall admit any person or agent designated  
26 by the correctional administrator into his or her residence at any  
27 time for purposes of verifying the participant's compliance with  
28 the conditions of his or her detention.

29 (3) The participant shall agree to the use of electronic  
30 monitoring or supervising devices for the purpose of helping to  
31 verify his or her compliance with the rules and regulations of the  
32 home detention program. The devices shall not be used to  
33 eavesdrop or record any conversation, except a conversation  
34 between the participant and the person supervising the participant  
35 which is to be used solely for the purposes of voice identification.

36 (4) The participant shall agree that the correctional  
37 administrator in charge of the county correctional facility from  
38 which the participant was released may, without further order of  
39 the court, immediately retake the person into custody to serve the  
40 balance of his or her sentence if the electronic monitoring or



1 supervising devices are unable for any reason to properly perform  
2 their function at the designated place of home detention, if the  
3 person fails to remain within the place of home detention as  
4 stipulated in the agreement, if the person willfully fails to pay fees  
5 to the provider of electronic home detention services, as stipulated  
6 in the agreement, subsequent to the written notification of the  
7 participant that the payment has not been received and that return  
8 to custody may result, or if the person for any other reason no  
9 longer meets the established criteria under this section. A copy of  
10 the agreement shall be delivered to the participant and a copy  
11 retained by the correctional administrator.

12 (c) Whenever the peace officer supervising a participant has  
13 reasonable cause to believe that the participant is not complying  
14 with the rules or conditions of the program, or that the electronic  
15 monitoring devices are unable to function properly in the  
16 designated place of confinement, the peace officer may, under  
17 general or specific authorization of the correctional administrator,  
18 and without a warrant of arrest, retake the person into custody to  
19 complete the remainder of the original sentence.

20 (d) Nothing in this section shall be construed to require the  
21 correctional administrator to allow a person to participate in this  
22 program if it appears from the record that the person has not  
23 satisfactorily complied with reasonable rules and regulations  
24 while in custody. A person shall be eligible for participation in a  
25 home detention program only if the correctional administrator  
26 concludes that the person meets the criteria for release established  
27 under this section and that the person's participation is consistent  
28 with any reasonable rules and regulations prescribed by the board  
29 of supervisors or the administrative policy of the correctional  
30 administrator.

31 (1) The rules and regulations and administrative policy of the  
32 program shall be written and reviewed on an annual basis by the  
33 county board of supervisors and the correctional administrator.  
34 The rules and regulations shall be given to or made available to any  
35 participant upon request.

36 (2) The correctional administrator, or his or her designee, shall  
37 have the sole discretionary authority to permit program  
38 participation as an alternative to physical custody. All persons  
39 referred or recommended by the court to participate in the home  
40 detention program pursuant to subdivision (e) who are denied



1 participation or all persons removed from program participation  
2 shall be notified in writing of the specific reasons for the denial or  
3 removal. The notice of denial or removal shall include the  
4 participant's appeal rights, as established by program  
5 administrative policy.

6 (e) The court may recommend or refer a person to the  
7 correctional administrator for consideration for placement in the  
8 home detention program. The recommendation or referral of the  
9 court shall be given great weight in the determination of  
10 acceptance or denial. At the time of sentencing or at any time that  
11 the court deems it necessary, the court may restrict or deny the  
12 defendant's participation in a home detention program.

13 (f) The correctional administrator may permit home detention  
14 program participants to seek and retain employment in the  
15 community, attend psychological counseling sessions or  
16 educational or vocational training classes, or seek medical and  
17 dental assistance. Willful failure of the program participant to  
18 return to the place of home detention not later than the expiration  
19 of any period of time during which he or she is authorized to be  
20 away from the place of home detention pursuant to this section and  
21 unauthorized departures from the place of home detention are  
22 punishable as provided in Section 4532.

23 (g) The board of supervisors may prescribe a program  
24 administrative fee to be paid by each home detention participant  
25 that shall be determined according to his or her ability to pay.  
26 Inability to pay all or a portion of the program fees shall not  
27 preclude participation in the program, and eligibility shall not be  
28 enhanced by reason of ability to pay. All program administration  
29 and supervision fees shall be administered in compliance with  
30 Section 1208.2.

31 (h) As used in this section, the following words have the  
32 following meanings:

33 (1) "Correctional administrator" means the sheriff, probation  
34 officer, or director of the county department of corrections.

35 (2) "Minimum security inmate" means an inmate who, by  
36 established local classification criteria, would be eligible for  
37 placement in a Type IV local detention facility, as described in  
38 Title 15 of the California Code of Regulations, or for placement  
39 into the community for work or school activities, or who is  
40 determined to be a minimum security risk under a classification

1 plan developed pursuant to Section 1050 of Title 15 of the  
2 California Code of Regulations.

3 (3) “Low-risk offender” means a probationer, as defined by  
4 the National Institute of Corrections model probation system.

5 (i) Notwithstanding any other law, the police department of a  
6 city where an office is located to which persons on an electronic  
7 monitoring program report may require the county correctional  
8 administrator to provide information concerning those persons.  
9 This information shall be limited to the name, address, date of  
10 birth, and offense committed by the home detainee. Any  
11 information received by a police department pursuant to this  
12 paragraph shall be used only for the purpose of monitoring the  
13 impact of home detention programs on the community.

14 (j) It is the intent of the Legislature that home detention  
15 programs established under this section maintain the highest  
16 public confidence, credibility, and public safety. In the furtherance  
17 of these standards, the following shall apply:

18 (1) The correctional administrator, with the approval of the  
19 board of supervisors, may administer a home detention program  
20 pursuant to written contracts with appropriate public or private  
21 agencies or entities to provide specified program services. No  
22 public or private agency or entity may operate a home detention  
23 program in any county without a written contract with that  
24 county’s correctional administrator. However, this does not apply  
25 to the use of electronic monitoring by the California Department  
26 of Corrections or the Department of the Youth Authority as  
27 established in Section 3004. No public or private agency or entity  
28 entering into a contract may itself employ any person who is in the  
29 home detention program.

30 (2) Program acceptance shall not circumvent the normal  
31 booking process for sentenced offenders. All home detention  
32 program participants shall be supervised.

33 (3) (A) All privately operated home detention programs shall  
34 be under the jurisdiction of, and subject to the terms and conditions  
35 of the contract entered into with, the correctional administrator.

36 (B) Each contract shall include, but not be limited to, all of the  
37 following:

38 (i) A provision whereby the private agency or entity agrees to  
39 operate in compliance with any available standards promulgated  
40 by state correctional agencies and bodies, including the Board of

1 Corrections, and all statutory provisions and mandates, state and  
2 county, as appropriate and applicable to the operation of home  
3 detention programs and the supervision of sentenced offenders in  
4 a home detention program.

5 (ii) A provision that clearly defines areas of respective  
6 responsibility and liability of the county and the private agency or  
7 entity.

8 (iii) A provision that requires the private agency or entity to  
9 demonstrate evidence of financial responsibility, submitted and  
10 approved by the board of supervisors, in amounts and under  
11 conditions sufficient to fully indemnify the county for reasonably  
12 foreseeable public liability, including legal defense costs, that may  
13 arise from, or be proximately caused by, acts or omissions of the  
14 contractor. The contract shall provide for annual review by the  
15 correctional administrator to ensure compliance with  
16 requirements set by the board of supervisors and for adjustment of  
17 the financial responsibility requirements if warranted by caseload  
18 changes or other factors.

19 (iv) A provision that requires the private agency or entity to  
20 provide evidence of financial responsibility, such as certificates of  
21 insurance or copies of insurance policies, prior to commencing any  
22 operations pursuant to the contract or at any time requested by the  
23 board of supervisors or correctional administrator.

24 (v) A provision that permits the correctional administrator to  
25 immediately terminate the contract with a private agency or entity  
26 at any time that the contractor fails to demonstrate evidence of  
27 financial responsibility.

28 (C) All privately operated home detention programs shall  
29 comply with all appropriate, applicable ordinances and  
30 regulations specified in subdivision (a) of Section 1208.

31 (D) The board of supervisors, the correctional administrator,  
32 and the designee of the correctional administrator shall comply  
33 with Section 1090 of the Government Code in the consideration,  
34 making, and execution of contracts pursuant to this section.

35 (E) The failure of the private agency or entity to comply with  
36 statutory provisions and requirements or with the standards  
37 established by the contract and with the correctional administrator  
38 may be sufficient cause to terminate the contract.

39 (F) Upon the discovery that a private agency or entity with  
40 whom there is a contract is not in compliance pursuant to this

1 paragraph, the correctional administrator shall give 60 days'  
2 notice to the director of the private agency or entity that the  
3 contract may be canceled if the specified deficiencies are not  
4 corrected.

5 (G) Shorter notice may be given or the contract may be  
6 canceled without notice whenever a serious threat to public safety  
7 is present because the private agency or entity has failed to comply  
8 with this section.

9 (k) For purposes of this section, "evidence of financial  
10 responsibility" may include, but is not limited to, certified copies  
11 of any of the following:

12 (1) A current liability insurance policy.

13 (2) A current errors and omissions insurance policy.

14 (3) A surety bond.

15 SEC. 8. Section 13517.7 is added to the Penal Code, to read:

16 13517.7. The commission shall establish minimum standards  
17 for the purpose of raising the level of competence of local law  
18 enforcement officers to ensure child safety at the time of a  
19 caretaker parent's arrest, including offering specialized training.

20 SEC. 9. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution for  
22 certain costs that may be incurred by a local agency or school  
23 district because in that regard this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

29 However, notwithstanding Section 17610 of the Government  
30 Code, if the Commission on State Mandates determines that this  
31 act contains other costs mandated by the state, reimbursement to  
32 local agencies and school districts for those costs shall be made  
33 pursuant to Part 7 (commencing with Section 17500) of Division  
34 4 of Title 2 of the Government Code. If the statewide cost of the  
35 claim for reimbursement does not exceed one million dollars  
36 (\$1,000,000), reimbursement shall be made from the State  
37 Mandates Claims Fund.

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